IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1063 114

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
Petitioner and Appellant below,

versus

MRS. EUGENE ADLER,
Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

And

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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In the

Supreme Court of the United States

October Term, 1943

No.

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
Petitioner and Appellant below,

versus

MRS. EUGENE ADLER,
Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is an action in damages for personal injuries sustained by the plaintiff, Mrs. Eugene Adler, against the American Mutual Liability Insurance Company, the insurance carrier of the Hart Theatre, under a provision of the Louisiana Statutes authorizing direct action against the insurer (Act 55 of 1930). The suit was filed in the United

States District Court for the Eastern District of Louisiana, Baton Rouge Division. The basis of the jurisdiction of the District Court was diversity of citizenship.

On August 31, 1941, the plaintiff, Mrs. Eugene Adler, was emerging from the Hart Theatre, on Convention Street in the City of Baton Rouge, when she slipped and fell, sustaining a fracture of the right limb just above the knee. The place where Mrs. Eugene Adler, the plaintiff, slipped and fell, was on the terrazzo pavement or sidewalk in front of the Hart Theatre. The Hart Theatre was a newly constructed theatre, the same having been completed and opened for business on June 21, 1941. The sidewalk along the northern side of Convention Street in front of the Hart Theatre had been laid there by the contractors who built the Hart Theatre. A judgment was entered upon a jury verdict awarding damages in the amount of Five Thousand Dollars ($5,000.00) and expenses in the amount of One Thousand Eight Hundred and Four and 98/100 ($1,804.98) Dollars, with legal interest and costs.

The judgment of the District Court was affirmed by the Circuit Court of Appeals for the Fifth Circuit which denied an application for a rehearing.

BASIS OF THIS COURT'S JURISDICTION.

The jurisdiction of the Supreme Court to review the judgment of the Circuit Court of Appeals by writ of certiorari is sustained by the United States Judicial Code, Section 240 (28 U. S. C. A., Section 347). Rehearing was denied by the Circuit Court of Appeals for the Fifth Cir-

cuit on May 2, 1944. (The case does not appear to have been reported). A stay order was granted on May 8, 1944. This petition will be filed on or before June 7, 1944.

The jurisdiction of the District Court was based upon diversity of citizenship, the complainant being a citizen of the State of Louisiana and the defendant being a corporation incorporated under the laws of the State of Massachusetts; and upon the amount in controversy being in excess of Three Thousand Dollars, exclusive of interest and costs. The statutory authority for this jurisdiction is the United States Judicial Code, Section 24 (28 U. S. C. A., Section 41 (1)). Jurisdiction of the Circuit Court of Appeals was based upon the United States Judicial Code, Section 128 (28 U. S. C. A., Section 225).

QUESTIONS PRESENTED.

The specific questions presented are:

(1) Whether this defendant is the proper defendant: whether an abutting property owner, or his tenant, in a municipality which has absolute control, power, and authority with respect to the construction and maintenance of its public sidewalks, can be held liable for an injury sustained on a public sidewalk when the abutting owner, or his tenant, has not created a dangerous condition amounting to a nuisance.

(2) Whether the duty and responsibility imposed upon the municipality by its charter, whereby the municipality has complete power and authority to require

that the public sidewalks be constructed and maintained in a reasonably safe condition, at the cost and expense of the abutting property owner, is a *public* duty; and if so, whether a *private* action will lie for breach of such *public* duty.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

(1) That the Circuit Court of Appeals has resolved important questions of local law contrary to the applicable statutory provisions as interpreted by the Courts of Appeal and the Supreme Court of the State of Louisiana.

(2) The Circuit Court of Appeals has decided important questions of local law contrary to the well settled jurisprudence of the State of Louisiana; and the judgment entered and affirmed upon the jury verdict awarding damages is in conflict with the jurisprudence of the State of Louisiana.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Honorable Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its Docket No. 10,797, American Mutual Liability Insurance Company, Appellant, v. Mrs. Eugene Adler, Appellee, to

the end that this cause may be reviewed and determined by the Court as provided by the Statutes of the United States; and that the judgment herein of said Court of Appeals be reversed by this Court, and for such further relief as to this Court may seem proper.

Respectfully submitted,

American Mutual Lialibity Insurance Company,
Petitioner.

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